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March 8, 2004

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte* Notice  
Docket No. 00-230  
(Secondary Markets)

Dear Ms. Dortch:

On March 5, 2004, the undersigned representatives of Salmon PCS, LLC ("Salmon") were joined by George D. Crowley, Jr., CEO of Salmon, in two separate meetings: one with Sheryl Wilkerson in Chairman Powell's office, and one with Jennifer Manner in Commissioner Abernathy's office. The purpose of the meetings was to encourage the Commission to give priority attention to releasing an order on reconsideration or a second report and order in the above-referenced proceeding in order to accord FCC-licensed designated entities greater flexibility to enter into spectrum manager lease agreements. Attached is a detailed outline of the topics discussed, copies of which were distributed at the meeting.

The parties oral comments were consistent with the formal comments and reply comments filed by Salmon in the secondary markets proceeding (WT Docket No. 00-230) on reconsideration and pursuant to the *Further Notice of Proposed Rulemaking*.<sup>1</sup>

Kindly refer any questions in connection with this notice to the undersigned.

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<sup>1</sup> FCC 03-113 released October 6, 2003.

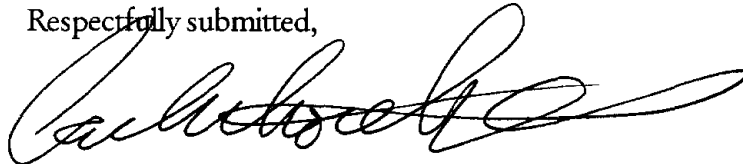
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Marlene H. Dortch, Secretary

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl W. Northrop", with a long, sweeping horizontal stroke extending to the right.

Carl W. Northrop

Ray Rutngamlug

of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Sheryl Wilkerson  
Jennifer Manner

## **DE Spectrum Leasing Presentation**

### **I. The Current Situation:**

- Salmon is a very small business designated entity (DE) controlled by Crowley Digital Wireless LLC, which in turn is controlled by entrepreneur George D. Crowley Jr.
- Cingular Wireless is a major investor in Salmon and provides management services to Salmon pursuant to FCC-approved operating agreements.
- Salmon holds licenses in 45 markets covering a total population of approximately 12 million people.
- Salmon is operating in multiple markets and will be rolling out commercial service in additional markets between now and 2006.

### **II. Salmon Would Like to Become a Spectrum Lessor Due to Changed Circumstances:**

- The FCC's *Spectrum Leasing Order* provides welcomed flexibility in the business arrangements that license holders now can pursue.
- The *NextWave* case dramatically affected the Salmon business plan:
  - Salmon was unable to secure licenses in 34 large markets where it was the high bidder at Auction 35 (e.g., Atlanta, Baltimore, Boston, Dallas, Denver, Houston, Los Angeles, Tampa, Washington, D.C.).
- A spectrum manager leasing arrangement is a potentially attractive alternative for Salmon which now holds licenses in 45 relatively small and dispersed markets.

### **III. The Problem:**

- Conflicting language in the *Spectrum Leasing Order* created uncertainty on whether a DE could enter into a lease with a non-eligible.
- Salmon sought clarification from the Wireless Bureau so that it could pursue an arrangement that would not jeopardize Salmon's DE status.
- The Bureau has indicated that Salmon cannot pursue the arrangement it seeks unless the Commission changes the leasing rules on reconsideration or pursuant to the *Further Notice of Proposed Rulemaking*.
- The Bottom Line - DE licenses are effectively precluded from benefiting from the FCC's secondary markets policy absent reconsideration or further rule changes. This directly contradicts the stated goal in the

secondary markets proceeding of providing additional flexibility to licensees *including DEs*.

#### IV. The Public Interest Will Be Served If DEs Can Lease Their Spectrum:

- The statutory mandate to provide spectrum-based opportunities to DEs is served if DE-licensees can become spectrum lessors.
- Flexibility through leasing will enable DEs like Salmon to adjust their business plans following the unexpected loss of the NextWave licenses.
- The integrity of the DE program is preserved as long as the eligible DE maintains *de jure* and *de facto* control over the licensee entity and over the spectrum leasing activities.
  - Direct DE management of the underlying facilities is not necessary to maintain the integrity of the FCC processes or the DE program.

#### V. The Solution:

- The Bureau needs to issue an *Order on Reconsideration* or a *Second Report and Order* expressly supporting leasing by DEs.
  - The old *Intermountain Microwave* control factors should be abandoned for all purposes in favor of the new *de facto* control test enunciated in the *Spectrum Leasing Order*. Alternatively, the *Intermountain Microwave* tests should only be used to determine whether the DE has retained control over the leasing operation, not over the underlying facilities.
  - The rules should explicitly recognize that DE licensees can enter into spectrum manager leases with non-eligibles as long as the eligible retains *de facto* and *de jure* control over the licensee corporation and exercises day-to-day control over the spectrum leasing activity.
- Time is of the essence:
  - Salmon and other DE winners in Auction 35 are at critical stages of development and need to know soon that leasing is an option.
  - There is no opposition in response to either the reconsideration petitions or the comments on the *Further Notice* to the relief Salmon is seeking.